
CONDITIONAL COMMITMENT LETTER

by and between

UNITED STATES DEPARTMENT OF ENERGY

and

TENNECO AUTOMOTIVE OPERATING COMPANY INC.

and

TENNECO, INC.

Dated as of October 27, 2009

Table of Contents

CONDITIONAL COMMITMENT LETTER	1
1. Facilities, etc.....	1
2. Conditional Commitment	2
3. True and Complete Disclosure	3
4. Indemnity.....	4
5. Cooperation	4
6. Reporting Requirements.....	5
7. Definitive Transaction Documents.....	6
8. Support from Parent.....	6
9. Assignment; Entire Agreement.....	6
10. Binding Nature; Survival	7
11. Counterparts	7
12. Confidentiality.....	7
13. Public Announcements.....	7
14. Governing Law.....	7
15. Acceptance of Term Sheet; Expiration of Commitment	7
TERMS AND CONDITIONS FOR THE LOAN UNDER THE ATVM PROGRAM	A-1
1. Facility.....	A-1
2. Borrower.....	A-1
3. Obligors; Loan Parties	A-2
4. Projects	A-2
5. Project Business Plan	A-2
6. Total Project Costs.....	A-2
7. Applicant Project Commitment.....	A-3
8. Applicant Project Commitment Payments and Eligible Cost Overruns.....	A-3
9. The Loan	A-4
10. Availability.....	A-4
11. Interest Rate.....	A-5
12. Interest Payments.....	A-6
13. Principal Amortization and Maturity.....	A-6
14. Prepayments of the Loan.....	A-6
15. Facility Fee	A-11
16. Loan Administration	A-11
17. Loan Documents	A-11
18. Security Documents.....	A-12
19. Project Documents.....	A-12
20. Conditions Precedent to the Financial Closing Date	A-13
21. Conditions Precedent to Each Advance Date	A-16
22. Representations and Warranties	A-18
23. Financial Covenants	A-20
24. Affirmative Covenants.....	A-22
25. Negative Covenants.....	A-25
26. Events of Default.....	A-27
27. Remedies	A-29
28. Required Insurance	A-29
29. Amendments.....	A-29
30. Indemnification	A-30
31. Governing Law.....	A-31

Appendices to the Conditional Commitment Letter

Appendix A Term Sheet

Appendix B Relevant Provisions from Section 136 and the Applicable Statutes

Appendix C Key Milestones

Exhibits to the Term Sheet

Exhibit A Application

Glossary of Defined Terms

Advance	A-4	Late Charge	A-5
Advance Date	A-16	Late Charge Rate.....	A-5
Advances	A-4	Loan	1, A-1
Affiliate.....	A-7	Loan Availability Period.....	A-4
Applicable Regulations.....	1	Loan Documents	A-11
Applicant	1	Loan Parties	A-2
Applicant Project Commitment.....	A-3	Mandatory Prepayment	A-6
Applicant Project Payments.....	A-3	Mandatory Redemption	A-7
Application	1	Mandatory Redemption Event	A-7
Arrangement Agreement	A-11	Material Adverse Effect.....	2, A-16
ATVM Program.....	1	Maximum Facility Amount.....	1, A-1
Borrower	A-1	NEPA	A-24
Collateral	A-10	Note Purchase Agreement.....	A-11
Collateral Value Certificate	A-15	Parent	2, A-2
Conditional Commitment Letter.....	1	Payment Date	A-6
Conditional Commitment Letter Representations.....	3	Prepayment Price	A-9
control	A-7	Program Financing Agreement.....	A-11
Credit Agreement	A-1	Program Requirements.....	1
Customer.....	A-8	Prohibition on Additional Indebtedness.....	A-25
DOE.....	1	Prohibition on Additional Liens.....	A-25
Eligible Cost Overruns	A-4	Project Business Plan.....	A-2
Eligible Costs.....	A-3	Project Documents	A-12
Emissions Reducing Technology Systems ..	2, A-2	Project Maximum Loan Amount	A-4
Events of Default	A-27	Projects.....	A-2
Exchange Act.....	5, A-22	Promissory Note.....	A-11
Facility Fee	A-11	Quarterly Project Certificate	A-23
FFB	1	Required Insurance	A-29
Final Maturity Date	A-6	Responsible Officer	A-22
Financial Closing Date	A-13	Restricted Payments.....	A-26
Financial Covenants	A-20	SEC	4, A-13
First Principal Payment Date.....	A-6	Second Lien Notes Indenture	A-1
First Priority Collateral.....	A-10	Section 136.....	1
FOIA	5	Security Documents	A-12
Funding Agreements.....	A-11	Supplemental Funding	2
Guarantee.....	A-12	Term Sheet	1
Guarantors	A-2	Total Eligible Costs.....	A-3
Indemnified Person.....	4, A-30	Total Project Costs	A-3
Interest Rate	A-5	Transaction Documents	A-13
IP.....	A-10	Unapplied Advance.....	A-7
Key Milestones	6	you.....	1

CONDITIONAL COMMITMENT LETTER

October 27, 2009

Tenneco Automotive Operating Company Inc.
500 North Field Drive
Lake Forest, IL 60045

Tenneco, Inc.
500 North Field Drive
Lake Forest, IL 60045

Re: Loan Application of Tenneco Automotive Operating Company Inc. (the "*Application*")
ATVM Loan Number: A1006

Ladies and Gentlemen:

Tenneco Automotive Operating Company Inc. ("*you*" or the "*Applicant*") has submitted an application (as supplemented through the date hereof, the "*Application*") for a multiple draw term loan authorized and approved by the U.S. Department of Energy ("*DOE*") pursuant to DOE's Advanced Technology Vehicles Manufacturing Incentive Program (the "*ATVM Program*") authorized by section 136 of the Energy Independence and Security Act of 2007, as amended from time to time ("*Section 136*"), and made by and through the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("*FFB*").

This conditional commitment letter (together with all attachments hereto, including, without limitation, the Terms and Conditions for the Loan under the ATVM Program (the "*Term Sheet*") attached as Appendix A hereto, the "*Conditional Commitment Letter*") will confirm the understanding and agreement between DOE and the Applicant in connection with the proposed financing for the Projects. Capitalized terms used but not defined herein have the meanings given to such terms in (i) the Term Sheet or (ii) the final regulations located at 10 CFR Part 611 and any other applicable regulations from time to time promulgated by DOE to implement Section 136 (the "*Applicable Regulations*" and, together with Section 136, the "*Program Requirements*"). All provisions of this Conditional Commitment Letter are subject to the Program Requirements.

1. Facilities, etc.

You have advised us that you wish to obtain the direct loan described in the Term Sheet in an aggregate principal amount of up to \$24,115,000.00 (TWENTY-FOUR MILLION ONE HUNDRED FIFTEEN THOUSAND U.S. DOLLARS) (the "*Maximum Facility Amount*") to finance Eligible Costs for the Projects to be provided through a seven-year multiple draw term loan facility (the "*Loan*").

2. Conditional Commitment

In connection with the foregoing, we are pleased to advise you that, subject to the conditions set forth herein, DOE is willing to (a) arrange the Loan, (b) designate the Applicant as a borrower under the Program Financing Agreement and (c) cause FFB to enter into a Note Purchase Agreement with the Applicant and DOE for the purchase of one or more Notes issued by the Applicant evidencing Advances to be made under the Loan, as more particularly set out below. DOE's commitment hereunder is subject to (i) the preparation, execution and delivery of definitive Transaction Documents incorporating the terms and conditions set forth in this Conditional Commitment Letter, satisfactory to DOE, in its sole discretion, (ii) there not having occurred any event, change or condition since September 30, 2009 that, individually or in the aggregate, has had, or could reasonably be expected to have, a material adverse effect on (x) the Projects or (y) the business, property, operations or condition (financial or otherwise) of the Applicant's parent Tenneco, Inc. (the "*Parent*") and its subsidiaries, taken as a whole (a "*Material Adverse Effect*"), (iii) DOE's satisfaction, in its sole discretion, in all respects with the results of its business, legal, tax, accounting and environmental due diligence investigation with respect to the Applicant, the Parent and their respective subsidiaries and the Projects, (iv) DOE's satisfaction, in its sole discretion, with, and the absence of any material changes in, the capital, corporate and organizational structure of the Applicant, the Parent and their respective subsidiaries, (v) your receipt to DOE's satisfaction, in its sole discretion, of all material governmental, internal corporate, third party and any other consents necessary to permit the Loan and the borrowings thereunder and (vi) those conditions precedent specified in the Term Sheet.

As an inducement to DOE to enter into this Conditional Commitment Letter, you represent and warrant to, and agree with, DOE that:

- (A) you intend to manufacture emissions reducing technology systems ("*Emissions Reducing Technology Systems*") for original equipment manufacturer customers in the passenger vehicle, light duty truck and heavy duty truck segments of the United States market that you (or the Parent) will develop as part of the Projects as contemplated by the Application;
- (B) you and the Parent intend to satisfy Customers' demand for Emissions Reducing Technology Systems in the United States market using manufacturing facilities located in the United States, as contemplated by the Application;
- (C) you, the Parent and your respective Affiliates are not seeking (and will not seek prior to the earlier of the occurrence of the Financial Closing Date or the expiration of the conditional commitments of DOE contemplated hereby pursuant to Section 15 of this Conditional Commitment Letter) alternative financing arrangements for the uses contemplated for the Loan, it being understood that you, the Parent and your respective Affiliates may seek supplemental funding from states or other non-federal governmental entities in the United States in connection with your business ("*Supplemental Funding*"), *provided* that such Supplemental Funding is permitted by the Program Requirements; and
- (D) you and the Parent have all corporate power and authority, respectively, to enter into and perform, or in the case of the Parent, to authorize you to enter into and perform, your

respective obligations under this Conditional Commitment Letter, and no action or authorization on behalf of you or the Parent or by third-parties (including any government or other authority) is required to be obtained to enter into and perform your respective obligations hereunder except as set forth herein or in the Term Sheet or otherwise expressly disclosed to DOE as such in writing (such representations and warranties in the foregoing clauses (A), (B), (C) and (D), the "*Conditional Commitment Letter Representations*").

3. True and Complete Disclosure

The Applicant hereby certifies as follows:

- (a) the information (including, without limitation, the Application), reports, financial statements, exhibits and schedules furnished by or on behalf of the Applicant, the Parent or any of their respective subsidiaries to DOE, FFB or their respective designees, agents or representatives in connection with the negotiation, preparation or delivery of this Conditional Commitment Letter, including the Term Sheet, or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified);
- (b) all information furnished after the date hereof by or on behalf of the Applicant, the Parent or any of their respective subsidiaries to DOE, FFB or their respective designees, agents or representatives in connection with the Conditional Commitment Letter, including the Term Sheet, or the Transaction Documents and the transactions contemplated hereby and thereby, when taken as a whole and together with all information furnished prior to the date hereof, will not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified); and
- (c) there is no fact known to the Applicant, or the Parent or any of their respective subsidiaries, other than facts generally known to the public that relate to changes in the automotive industry or to conditions in the U.S. or global economy or capital or financial markets generally or to changes in general legal, tax, regulatory, political or business conditions, that, after due inquiry, could reasonably be expected to have a Material Adverse Effect on (i) the Projects, (ii) the Parent and its subsidiaries, taken as a whole, (iii) the ability of the Applicant to perform its obligations under the documents governing the Loan, including, without limitation, repayment of the Loan and completion of the Projects in accordance with such documents, (iv) the ability of the Parent or any of its subsidiaries to perform its respective obligations under the Guarantees or (v) the value of the Collateral, that has not been disclosed herein or in a report, financial statement,

exhibit, schedule, disclosure letter or other writing furnished to DOE or FFB for use in connection with the transactions contemplated hereby.

For the purposes of this Conditional Commitment Letter, the filing of information by the Parent with the Securities and Exchange Commission ("*SEC*") shall constitute "furnishing" or "providing" and "furnished" or "provided" information shall include all SEC filings made by the Parent.

4. Indemnity

The Applicant and the Parent shall indemnify and hold harmless the United States, including DOE and FFB, and each other governmental agency or instrumentality of the United States, and their respective designees, agents, and contractors, and all of their respective directors, officers and employees (each, an "*Indemnified Person*") from and against (and will reimburse such Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel, but other than the expenses incurred by DOE in connection with the preparation, negotiation, execution and delivery of this Conditional Commitment Letter, Term Sheet, and any Transaction Document), but excluding in all cases consequential or punitive damages, to which such Indemnified Person may become subject arising out of or in connection with (a) the execution or delivery of this Conditional Commitment Letter, Term Sheet, any Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (b) the enforcement or preservation of any rights under this Conditional Commitment Letter, Term Sheet, any Transaction Document or any agreement or instrument prepared in connection herewith or therewith, (c) the Loan or the use or proposed use of the proceeds thereof or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Applicant or any of its Affiliates or otherwise, and regardless of whether any Indemnified Person is a party thereto; *provided, however*, that such indemnity shall not apply to the extent the loss, claim, damage, liability or other expense results from the gross negligence or willful misconduct of the Indemnified Person or a material breach of the Indemnified Person's obligations hereunder, in each case, as determined by a court of competent jurisdiction in a final, non-appealable order. This indemnity obligation shall survive the execution of the Loan Documents and the expiration or other termination of the Loan.

5. Cooperation

The Applicant and the Parent will cooperate fully with DOE and its representatives and advisors with respect to its due diligence investigation of the Projects, the Applicant, the Parent and their respective subsidiaries, including, without limitation, providing prompt and complete access to employees, engineers, accountants, facilities, books and records and contracts of the Applicant, the Parent and their respective subsidiaries, as well as such other information as may be reasonably requested by DOE or its representatives or advisors, subject to reasonable measures implemented to ensure confidentiality of the information provided consistent with the

requirements of the Freedom of Information Act, 5 U.S.C. §552 ("FOIA") and any regulations promulgated thereunder, and other applicable law.

6. Reporting Requirements

The Applicant will provide the following documents and information to DOE beginning on the date on which a conditional commitment exists up to and including the Financial Closing Date (at which point Applicant will comply with the various reporting requirements set forth in the definitive Transaction Documents) or, if this Conditional Commitment Letter is terminated pursuant to the terms herein, through this Conditional Commitment Letter's termination date:

- (a) within five (5) business days of an officer of the Applicant obtaining knowledge of such change, notice of any change in the delivery or completion of any Projects or in the assets expected to be First Priority Collateral to the extent any such change would reduce the Maximum Facility Amount;
- (b) within five (5) business days of an officer of the Applicant obtaining knowledge of such change, notice of any previously unreported material change to the information contained in the Application, furnished or required to be furnished hereunder, or provided or to be provided, relating to the Projects, the Loan, the Collateral, the Applicant, the Parent or any of their respective subsidiaries, including, without limitation, any material change in (i) the description of the Projects and related plans, contractors and the intellectual property necessary to conduct the Projects, (ii) the status of Project-related applications or approvals for governmental permits and authorizations and (iii) the potential environmental impact of the Projects;
- (c) (i) within ninety (90) days after the end of each fiscal year of the Parent, a copy of the audited consolidated balance sheet of the Parent and its consolidated subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows (or such other similar or additional statement then required by the SEC for annual reports filed pursuant to the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")) for such year, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, or other material qualification or exception, by an independent certified public accountant of nationally recognized standing and (ii) within forty-five (45) days after the end of each of the first three quarterly periods of each fiscal year of the Parent, the unaudited consolidated balance sheet of the Parent and its consolidated subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows (or such other or similar or additional statement then required by the SEC for quarterly reports filed pursuant to the Exchange Act) for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments); and

- (d) as requested by DOE, any other information regarding the Applicant, the Parent or any of their respective subsidiaries or the Projects that is reasonably related to DOE's ongoing due diligence or loan monitoring efforts.

7. Definitive Transaction Documents

As soon as practicable following the execution and delivery of this Conditional Commitment Letter, DOE and the Applicant will negotiate in good faith to enter into definitive Transaction Documents with respect to the transactions described in the Term Sheet. The Transaction Documents will include (a) the terms contained herein, including, but not limited to those terms set forth in Appendix B hereto setting forth relevant provisions of the Applicable Regulations pertaining to required terms and conditions of the Arrangement Agreement and in Appendix C hereto setting forth an agreed set of milestones in respect of key payment dates, tooling kick-off dates, production readiness and start of production, together with the anticipated completion dates for each milestone based on the Borrower's internal planning processes (collectively, the "Key Milestones"), in chronological order, that the Applicant will need to satisfy in order to fully complete the Projects, it being understood that the substance of the Key Milestones may only be updated or otherwise amended with the consent of DOE, acting in its sole discretion, (b) the Term Sheet and (c) such other terms and conditions as DOE and the Applicant mutually agree. Each of DOE and the Applicant agrees to use its commercially reasonable efforts (x) to prepare such Transaction Documents and (y) to take all such actions as may be required to consummate the transactions described in the Term Sheet on the terms and conditions set forth therein. However, the failure of DOE to execute and deliver definitive Transaction Documents will not affect the binding effect or enforceability of Sections 3, 4, 9, 12, 13 and 14 of this Conditional Commitment Letter.

8. Support from Parent

Parent undertakes and agrees to use its commercially reasonable best efforts to, and to cause the Applicant and the Parent's other Affiliates to, enter into the Guarantee, satisfy the other closing conditions for the Loan and cause the completion of the Projects.

9. Assignment; Entire Agreement

This Conditional Commitment Letter shall not be assignable by you or the Parent without the prior written consent of DOE (and any such purported assignment shall be void) and may not be amended or waived except by a written instrument signed by you, the Parent and DOE. By executing this Conditional Commitment Letter, you, the Parent and DOE acknowledge that this Conditional Commitment Letter, including the Term Sheet, is the only agreement between you, the Parent and DOE with respect to the Loan and sets forth the entire understanding of the parties with respect thereto (it being understood that the Parent, pursuant to the Guarantee, will be undertaking certain obligations and making certain related representations and warranties in connection herewith). This Conditional Commitment Letter is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto.

10. Binding Nature; Survival

The provisions of this Conditional Commitment Letter are binding on the parties hereto, and Sections 3, 4, 9, 12, 13 and 14 of this Conditional Commitment Letter shall survive any termination or expiration of this Conditional Commitment Letter, but, in the case of Sections 3, 4, 9, 12 and 13 hereof, shall be superseded by the corresponding provisions of the Loan Documents upon the effectiveness of the Loan Documents, whereupon such Sections 3, 4, 9, 12 and 13 shall no longer have any force or effect.

11. Counterparts

This Conditional Commitment Letter may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Such executed counterparts may be delivered electronically, with the original to be delivered promptly thereafter.

12. Confidentiality

This Conditional Commitment Letter, including the Term Sheet, is delivered to you and the Parent on the understanding that neither this Conditional Commitment Letter nor any other agreement between the parties hereto related to this Conditional Commitment Letter or the Loan nor any of their terms or substance shall be disclosed, directly or indirectly, to any other person except (a) to your and the Parent's officers, employees, agents and legal advisors who are directly involved in the consideration of this matter (and then only on a confidential and need-to-know basis), (b) as may be required by law or compulsory legal process (in which case you agree to inform us promptly thereof prior to any such disclosure) and (c) as otherwise provided herein.

13. Public Announcements

DOE, you and the Parent shall agree on (a) the initial public announcement by you and the Parent (other than any public disclosure by the Parent required by law) of the Projects and the financing contemplated to be provided hereby and (b) any subsequent announcements by you and the Parent in connection with material developments in respect of the Projects (including, without limitation, any groundbreaking ceremony, the Projects going into operation, etc.) and the announcement of satisfaction of any Key Milestones.

14. Governing Law

This Conditional Commitment Letter, and the rights and obligations of the parties hereunder, shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

15. Acceptance of Term Sheet; Expiration of Commitment

If you are in agreement with the foregoing, please indicate your acceptance of the terms and conditions of this Conditional Commitment Letter, including the Term Sheet, by signing in the

appropriate space below and returning to DOE (whether by way of manual or electronic delivery) one or more executed counterparts of this Conditional Commitment Letter not later than 5:00 p.m., Washington D.C. time, on October 27, 2009. DOE's commitment hereunder will expire at such time in the event DOE has not received such counterpart(s) executed by both the Applicant and the Parent in accordance with the preceding sentence. In the event that the Financial Closing Date shall not have occurred on or before January 31, 2010, then this Conditional Commitment Letter and DOE's commitments hereunder shall terminate, unless the Secretary or his appointed designee agrees in writing to an extension. Such extension may be subject, at DOE's sole discretion, to modification of the terms hereof.

[Signatures Appear on Next Page]

Very truly yours,

U.S. DEPARTMENT OF ENERGY

By: 

Lachlan Seward, Director Advanced
Technology Vehicles Manufacturing
Loan Program

ACCEPTED AND AGREED TO

As of the date of this condition Commitment Letter:

**TENNECO AUTOMOTIVE OPERATING
COMPANY INC.**

By: 

Name: John E. Kunz

Title: Vice President – Treasurer and Tax

TENNECO, INC.

By: 

Name: John E. Kunz

Title: Vice President – Treasurer and Tax

TERMS AND CONDITIONS FOR THE LOAN UNDER THE ATVM PROGRAM

This Term Sheet outlines the material terms and conditions of the transactions contemplated herein, but is not intended to be a comprehensive list of all relevant terms and conditions. The Transaction Documents will contain the terms and conditions set forth in this Term Sheet, in addition to other standard provisions and such other terms and conditions as DOE, in its sole discretion, may require. DOE reserves the right to propose such further terms and conditions as it deems necessary in the course of further due diligence and receipt of related approvals satisfactory to DOE, in its sole discretion, and any other approval procedures customary for a transaction of this nature.

Facility

1. Facility

A multi-draw term loan facility in an aggregate principal amount of up to \$24,115,000.00 (TWENTY-FOUR MILLION ONE HUNDRED FIFTEEN THOUSAND U.S. DOLLARS) (the "*Maximum Facility Amount*") that is full recourse to the Borrower (the "*Loan*"). The Maximum Facility Amount shall be subject to adjustment and reduction in the event any equipment or assets comprising any Project is not available to be First Priority Collateral in favor of DOE. The Loan will be guaranteed by unconditional guarantees by the Guarantors and secured by (a) a perfected first-priority security interest in all assets and other real or personal property acquired with the proceeds of the Loan and (b) a perfected security interest in all other assets of the Borrower and the Parent, including all inventory, equipment, tooling and intellectual property of the Borrower or the Parent, and each other asset described in Section 14(f) hereof; provided that, in the case of (b) above, (i) such security interest shall be subordinated to the liens granted in connection with the Second Amended and Restated Credit Agreement, dated as of March 16, 2007, among the Parent, the several lenders from time to time parties thereto, JPMorgan Chase Bank, N.A., as administrative agent and the other financial institutions named therein (as amended, the "*Credit Agreement*") and the Indenture, dated as of June 19, 2003, among the Parent, certain subsidiaries of the Parent and U.S. Bank National Association, as trustee and successor to Wachovia Bank, National Association (as amended, the "*Second Lien Notes Indenture*"), as the Credit Agreement or the Second Lien Notes Indenture may be amended, supplemented, refinanced, replaced or modified from time to time (including (x) any increase in the amount of indebtedness under the Credit Agreement or under the Second Lien Notes Indenture and (y) any successor credit facility, even if not proximate to the original credit facility (including a successor that comes into existence at a time after the original credit facility and any proximate successors have been paid in full), and (ii) DOE shall not use any licenses on intellectual property granted to it by any Loan Party until an Event of Default has occurred or is continuing.

2. Borrower

Tenneco Automotive Operating Company Inc., a corporation organized under the laws of Delaware (the "*Borrower*").

3. Obligors; Loan Parties

The Borrower, Tenneco, Inc., a corporation organized under the laws of Delaware and parent company of the Borrower (the "*Parent*"), and each domestic subsidiary of the Parent that is a guarantor under the Credit Agreement and the other loan documents thereunder (collectively with the Parent, the "*Guarantors*", and the Borrower and the Guarantors collectively, the "*Loan Parties*").

Projects and Eligible Costs

4. Projects

The proceeds of the Loans will be used to finance eligible systems engineering and component development and production costs for the Borrower's emissions reducing technology systems ("*Emissions Reducing Technology Systems*") for original equipment manufacture customers in the passenger vehicle, light duty truck and heavy duty truck segments of the United States market that the Loan Parties will develop as part of the Projects, as described in more detail in the Application (the "*Projects*").

5. Project Business Plan

The Borrower will, no later than 15 business days prior to the Financial Closing Date, provide (a) an updated business plan on which the Projects are based, together with an updated financial model presenting quarterly *pro forma* financial statements for the Loan Parties through (and including) 2009 and annually thereafter through (and including) 2013, including, *inter alia*, income statements, balance sheets and cash flow statements, (b) a detailed description of the overall financing plan for the Projects, including all sources and uses of funding and the liability of the parties associated with the Projects (including specific line items for each Key Milestone (as defined herein) and the anticipated costs and expenses that the Borrower expects will be incurred in connection with, and upon the completion of, each of the Key Milestones and each other material component, phase, or other elements of the Projects, it being understood that while the Project Business Plan may be periodically updated or otherwise amended in accordance with the terms of this Term Sheet, the substance of the Key Milestones may only be updated or otherwise amended with the consent of DOE, acting in its sole discretion), proposed Loan disbursements, equity and debt (including how such equity and debt are allocated to each specific line item referenced above), (c) a detailed estimate of the total costs to be incurred in connection with each of the Projects together with a description of the methodology and assumptions used to produce such estimates and (d) such other information as may be required by DOE, in each case, as may be acceptable to DOE in its sole discretion (collectively, the "*Project Business Plan*").

6. Total Project Costs

- (a) The costs of the Projects shall be categorized as follows:
- (i) equipment lease payments to Customers;
 - (ii) machinery and equipment;

- (iii) tooling;
 - (iv) engineering integration; and
 - (v) Project launch costs (collectively, the "*Total Project Costs*").
- (b) The Borrower will apply the Loan proceeds solely to pay those portions of the Total Project Costs that are eligible for funding as "Eligible Costs" as defined in the Applicable Regulations (the "*Eligible Costs*").

For the avoidance of doubt, in no event will the proceeds of any Advance (defined below) be applied towards (i) any portion of the Total Project Costs paid prior to December 30, 2008 or (ii) any machinery or equipment on which DOE is not able to have, or otherwise does not have, a first priority lien.

- (c) The Borrower estimates as of the date of this Term Sheet that Eligible Costs will be an aggregate amount of \$33,771.00 (the "*Total Eligible Costs*").

For the avoidance of doubt, subject to the Program Requirements, Total Eligible Costs may include certain costs incurred before the Financial Closing Date.

- (d) The Borrower agrees and acknowledges that no costs or expenses relating to any Project shall constitute "Eligible Costs" as defined in the Applicable Regulations to the extent such costs or expenses were funded with proceeds obtained by the Loan Parties from the United States or any instrumentality thereof (other than the Loans), including, without limitation, under the Troubled Asset Relief Program or any other grant or loan program.

7. Applicant Project Commitment

The Borrower will commit to pay all costs and expenses incurred to complete and perform each Project in accordance with the Project Business Plan (regardless of whether such costs and expenses constitute Eligible Costs) in excess of the amounts permitted to be advanced as of any date under the terms of the Loan (such payments and commitment, respectively, the "*Applicant Project Payments*" and "*Applicant Project Commitment*").

For the avoidance of any doubt, and in accordance with Sections 9 and 21(h) hereof, as of any date of determination, the total amount of Advances that shall by then have been disbursed in respect of the Loan shall not be permitted to exceed 80% of the Eligible Costs incurred in respect of the applicable Project as of such date.

8. Applicant Project Commitment Payments and Eligible Cost Overruns.

- (a) Prior to the making of any Advance, the Borrower will make payments and/or provide evidence of payments made in respect of the Applicant Project Commitment required to be paid as of such date pursuant to Sections 7 and 21(h) hereof.
- (b) Upon such time as the Borrower incurs aggregate Eligible Costs in respect of the Loan in excess of an amount equal to the product of (i) 80% and (ii) the applicable Total Eligible

Costs specified in Section 6 above (such excess, the "*Eligible Cost Overruns*"), the Borrower shall be required to pay such Eligible Cost Overruns out of its own funds (for the avoidance of doubt, the Borrower shall not be permitted to use the proceeds of any Loan to pay for any Eligible Cost Overruns, but may dispute any such costs with the applicable payee). In addition, the Borrower shall be required to pay any portion of the Total Project Costs that are not Eligible Costs out of its own funds (but may dispute any such costs with the applicable payee).

Loan

9. The Loan

The Loan is to be made by and through FFB, and authorized, approved and arranged by DOE pursuant to the terms and conditions of the ATVM Program, Section 136 and the Applicable Regulations, in an aggregate principal amount at any one time outstanding of not more than the lesser of (x) 80% of the Total Eligible Costs incurred as of any date of determination, and (y) \$24,115,000.00 (TWENTY-FOUR MILLION ONE HUNDRED FIFTEEN THOUSAND U.S. DOLLARS) as such amount may be adjusted in accordance with the terms hereunder and in the Transaction Documents (the "*Project Maximum Loan Amount*").

10. Availability

Subject to the terms of the Funding Agreements (as defined in Section 17 hereof), disbursements of the Loan (each an "*Advance*", and collectively, the "*Advances*") may be requested from time to time (but no more frequently than once during any calendar month) during the period (the "*Loan Availability Period*") from (x) the Financial Closing Date (as hereinafter defined), to (y) the date that is 24 months following the Financial Closing Date. The Loan Availability Period may be extended with the consent of DOE, acting in its sole discretion.

Subject to satisfaction of the conditions precedent set forth in the Loan Documents, the proceeds of the Advances will be used to pay Eligible Costs incurred in connection with the Projects in accordance with the Project Business Plan. Subject to the terms of the Funding Agreements and the other Transaction Documents, Advances to the Borrower will be made in accordance with the following procedures:

- (a) no less than ten (10) business days prior to any Advance Date (as defined below), Borrower shall provide DOE for its review and approval with (i) an advance request in sufficient detail and including wire transfer instructions and, if requested by DOE, in its sole discretion, copies of invoices, (ii) a certificate executed by an authorized officer of the Borrower certifying that the proceeds of the Advances will be used to pay Eligible Costs then due and payable and (iii) such other applicable documentation, certificates and information specified in this Term Sheet (including, without limitation, in Section 21 hereof and, prior to the Financial Closing Date, Section 20 hereof);
- (b) subject to satisfaction by the Borrower of all necessary conditions precedent specified in this Term Sheet, no less than three (3) business days prior to any Advance Date, DOE shall provide FFB with (i) the applicable advance request from the Borrower described in clause (a) above and (ii) an advance approval notice from DOE (which DOE agrees to

deliver to FFB upon satisfaction by the Borrower of the other conditions to such Advance); and

- (c) pursuant to the foregoing, FFB will make Advances to the Borrower (who will then make all such disbursements as are necessary directly to those persons to whom Borrower is obligated to make payment) to pay relevant Eligible Costs then due and payable, as soon as commercially practicable, and in any event within three (3) business days following receipt from DOE of the applicable advance request and advance approval notice specified above.

Borrower agrees that DOE shall only be required to use its commercially reasonable best efforts to provide FFB with the necessary advance requests and advance approval notices within the timeframes specified above, but DOE shall in any event ensure that FFB receives all such advance requests and advance approval notices as soon as commercially practicable following receipt from the Borrower of the applicable advance requests and necessary certificates specified above (subject to the Borrower satisfying all necessary conditions precedent specified in this Term Sheet, including, without limitation, in Section 21 hereof and, prior to the Financial Closing Date, Section 20 hereof).

11. Interest Rate

Subject to the terms of the Funding Agreements, each Advance shall have its own interest rate (the “*Interest Rate*”), which rate will be determined by the Secretary of the Treasury as of the date the respective Advance is made. The Interest Rate for each Advance will be a rate per annum equal to the single equivalent rate for the payment stream on the Advance under the terms of the Funding Agreements. The single equivalent rate will be determined first by envisioning the payment stream on an Advance under the Funding Agreements as a payment stream on a series of bonds in which each bond has a principal amount equal to the level principal installment due on each payment date on such Advance, and each bond matures on the same date as a payment date on such Advance, and then by assigning to each serial bond a separate interest rate derived from the daily Treasury Yield Curve corresponding to each bond’s maturity date. Then, a single equivalent rate is calculated and given to the Advance that produces the same payment stream that the sum of the payments on the individual serial bonds produces.

All overdue amounts on the Loan will accrue interest (the “*Late Charge*”) at the Late Charge Rate, defined below, and be payable by the Borrower, in accordance with the Funding Agreements.

The Late Charge shall accrue at a rate (the “*Late Charge Rate*”) equal to one and one-half times the rate to be determined by the Secretary of the Treasury taking into consideration the prevailing market yield on the remaining maturity of the most recently auctioned 13-week United States Treasury bills.

The Late Charge shall accrue from the scheduled date of payment for the overdue amounts to the date on which payment is made, and shall be computed on the basis of (A) actual days elapsed from (but not including) the scheduled date of payment for such overdue amount to (and including) the date on which payment is made.

The initial Late Charge Rate shall be in effect until the earlier to occur of either (A) the date on which payment of the overdue amounts and the amount of the accrued Late Charge is made, or (B) the first Payment Date (as defined below) to occur after the scheduled date of payment for such overdue amounts. In the event that the overdue amounts and the amount of the accrued Late Charge are not paid on or before such Payment Date, then the amount payable shall be the sum of the overdue amounts and the amount of the accrued Late Charge, plus a Late Charge on such sum accruing at a new Late Charge Rate to be then determined as described above. For so long as any overdue amount remains unpaid, the Late Charge Rate shall be re-determined as described above on each Payment Date to occur thereafter, and shall be applied to the overdue amount and all amounts of the accrued Late Charge to the date on which payment of the overdue amount and all amounts of the accrued Late Charge is made.

12. Interest Payments

Interest will accrue from the first Advance and thereafter be payable in cash in arrears on each quarterly payment date as specified in the Funding Agreements (each such date, a "*Payment Date*").

13. Principal Amortization and Maturity

The outstanding principal amount of each Advance will be payable in equal quarterly installments commencing on the first Payment Date occurring on the date that is 24 months following the Financial Closing Date (the "*First Principal Payment Date*"), except as provided in Section 14 below.

The final maturity of the Loan will be the date that is 7 years after the Financial Closing Date (the "*Final Maturity Date*").

14. Prepayments of the Loan

- (a) Voluntary Prepayments. Subject to clause (d) below, any Advance may be prepaid (x) in part at any time in an aggregate minimum amount of \$100,000, and integral multiples of \$100,000 in excess of that amount or (y) in whole.
- (b) Mandatory Prepayments. Subject to clause (d) below, the Borrower will apply the following proceeds towards the making of mandatory prepayments of borrowings under the Loan (any such prepayment, a "*Mandatory Prepayment*"):
 - (i) the net proceeds received from the permitted sale of any First Priority Collateral, except to the extent such First Priority Collateral is sold to (x) an Affiliate of the Borrower and either (1) such Affiliate grants a first priority lien on the purchased First Priority Collateral to DOE to secure the Borrower's obligations under the Loan or (2) DOE otherwise consents to such sale, or (y) a non-Affiliate of the Borrower and the net proceeds of such sale are re-invested in a Project within 180 days of such sale and the Borrower grants DOE a first priority security interest in the assets acquired from such re-invested proceeds;

- (ii) insurance or condemnation proceeds arising from any taking, confiscation or loss of, or damage to, any of the First Priority Collateral, payments in respect of warranty claims with respect to the First Priority Collateral, or other extraordinary receipts (e.g., cash received by or paid to the account of Borrower not in the ordinary course of business from, for example, damage claims under construction contracts) with respect to the First Priority Collateral (except to the extent such proceeds are permitted to be, and are, used to restore, repair or replace the affected First Priority Collateral); and
- (iii) proceeds of any Advance to the extent a Quarterly Project Certificate (as defined below) provides that the proceeds of any prior Advance (such Advance, an “*Unapplied Advance*”) was not applied to pay Eligible Costs.

For the purposes of this Term Sheet, “*Affiliate*” shall mean, as to any specified person, any other person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified person. For the purpose of defining Affiliate, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” shall have meanings correlative of the foregoing.

- (c) Mandatory Redemptions. Subject to clause (d) below, upon the occurrence of any of the following events (any such event, a “*Mandatory Redemption Event*”) (with materiality qualifications and exceptions to be agreed upon), the Borrower shall be required to prepay the full amount (together with accrued interest and other amounts then payable) of all Advances for the given Project that is the subject of the redemption event (except in the case of clause (i) which shall trigger a redemption of all Advances) then outstanding under the Loan (any such prepayment, a “*Mandatory Redemption*”):

- (i) upon the occurrence of a change of control of the Borrower or of the Parent (defined as the occurrence of any of the following events: (v) any sale, lease, exchange or other transfer of all or substantially all the assets of the Borrower or Parent to any person or group; (w) the approval by the holders of capital stock of the Borrower or the Parent of a plan or proposal for the liquidation or dissolution of the Borrower or Parent; (x) any person or group becomes the beneficial owner, directly or indirectly, of shares representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Parent; (y) during the period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Parent (together with those new directors elected by or whose nomination for election was approved by a majority of the directors still in office who were either directors at the beginning of such period or whose election or nomination was previously so approved) cease to constitute a majority of the Board of Directors then in office); or (z) the Parent shall cease to own directly 100% of all voting stock of the Borrower, in each case, without the consent of DOE, which consent shall not be (1) unreasonably withheld or (2) withheld if the Required Lenders (as defined in the Credit Agreement) under the Credit Agreement and requisite

security holders under the Second Lien Notes Indenture have otherwise consented to such change of control (to the extent such change of control requires the consent of such Required Lenders and requisite security holders);

- (ii) upon the failure of a Project to achieve any of the Key Milestones for such Project, as described in Section 5 hereof;
- (iii) permanent abandonment of a Project, or extended cessation of the manufacturing of any of the Emissions Reducing Technology Systems, which shall not include temporary shutdowns due to repairs, casualty, excess inventory, labor actions, force majeure, market demand, retooling, refurbishment or other legitimate business purposes as reasonably determined by the Borrower and agreed by DOE in its sole discretion;
- (iv) physical destruction or condemnation of assets related to a Project that could reasonably be expected to have a material adverse effect on such Project and that have not been repaired with the proceeds of insurance or otherwise mitigated by the Borrower within a specified number of days to be negotiated; and
- (v) breach by any customer that represents a material portion of projected revenue for any Project (each, a "*Customer*") of any obligation under the Borrower's or Parent's development and supply agreements, or equivalent agreements, documents or understanding with such Customer, or by certain other counterparties to other Project contracts, in each case that could reasonably be expected to have a material adverse effect on such Project, unless remedied within 180 days from the date of such breach.

To the extent that the occurrence of any event gives rise to a Mandatory Redemption Event, such event shall not also be considered to constitute or give rise to a default or an Event of Default hereunder.

(d) All Prepayments or Redemptions. All prepayments or redemptions of the Loan:

- (i) are subject to the terms of the Funding Agreements and the Arrangement Agreement; and
- (ii) will be applied:
 - (x) in each case of prepayments pursuant to clause (a) above, to remaining scheduled amortization payments, in the inverse order of maturity, under any of the outstanding Advances selected by the Borrower, as set forth in the Funding Agreements and the Arrangement Agreement;
 - (y) in each case of prepayments pursuant to clause (b) above, to remaining scheduled amortization payments, in the inverse order of maturity, under any of the Advances selected by DOE in its sole discretion the proceeds of which were used to acquire such affected First Priority Collateral (or, in the case of clause

(b)(iii), of the relevant Advance to which such Unapplied Advance relates), as set forth in the Funding Agreements and the Arrangement Agreement;

(z) in each case of prepayments pursuant to clause (c) above, to remaining scheduled amortization payments (i) under all of the Advances outstanding, in the case of clause (c)(i), and (ii) under the relevant Advances to which the Project triggering such Mandatory Redemption Event relates in the case of clauses (c)(ii) – (c)(v), as set forth in the Funding Agreements and the Arrangement Agreement.

Any outstanding Loan amounts prepaid may not be re-borrowed nor create availability for further borrowings during the Loan Availability Period. In the event of any redemption under clause (c) above, the remaining commitment amount for the given Project that is the subject of the redemption event shall be automatically terminated (except in the case of clause (c)(i) above, which shall automatically terminate all remaining commitment amounts under the Loan). Prepayments shall be made at a price equal to (x) in the event of a prepayment in whole of an Advance, the sum of (1) the price that would, if such Advance (including all unpaid interest accrued thereon through the intended prepayment date) were purchased by a third party and held until maturity, produce a yield to such third party purchaser, for the period between the date of purchase and maturity, substantially equal to the interest rate that would be set on a loan from the Secretary of the Treasury to FFB to purchase an obligation having a payment schedule identical to the payment schedule of such Advance for the period from the intended prepayment date to maturity, *plus* (2) all unpaid late charges accrued on such Advance through the intended prepayment date, *plus* (3) all accrued and unpaid interest (the “*Prepayment Price*”), (y) in the event of a partial prepayment of an Advance, a *pro rata* share of the Prepayment Price that would be required for a prepayment of the entire principal amount of such Advance, and (z) in the event of a repayment in full of all outstanding Advances, the sum of the Prepayment Prices for all such outstanding Advances.

(e) Guarantee

The Loan will be guaranteed by the Guarantors and each Guarantee (the “*Guarantees*”) will constitute an unconditional guarantee in favor of the United States of America (including DOE and FFB) of:

- (i) payment in full when due of all amounts of principal, interest and other amounts due by the Borrower under the Loan Documents;
- (ii) performance by the Loan Parties of all obligations under the Loan Documents;
- (iii) performance of all obligations under the Project Documents (whether by Borrower, Parent or any of the other Loan Parties);

and Parent will undertake in the Guarantee:

- (iv) to maintain its 100% direct ownership of all voting stock of the Borrower;
- (v) not to permit the imposition of any restrictions on its exercise of voting rights or encumbrances on such stock or restrictions on its exercise of control over

Borrower, other than such restrictions in favor of the creditors of Parent under the Credit Agreement or the Second Lien Notes Indenture (as each may be amended, supplemented, refinanced, replaced or modified from time to time), who hold liens on the equity of the Borrower; and

- (vi) to comply with certain financial and other covenants based on the Credit Agreement, Second Lien Notes Indenture or otherwise as may be agreed.

(f) Collateral

The Borrower's obligations under the Loan and the Guarantors' obligations under the Guarantees will be secured by: (1) a perfected first-priority security interest in all assets and other real or personal property acquired with the proceeds of the Loan and all proceeds of such assets and other property (collectively, the "*First Priority Collateral*") and (2) a perfected security interest in all of the following property now owned or at anytime hereafter acquired by any Loan Party or in which any Loan Party now has or at any time in the future may acquire any right, title or interest (collectively with the First Priority Collateral, the "*Collateral*");

- (i) all fixtures;
- (ii) certain of the most valuable land and buildings of the Loan Parties, as determined by DOE in its sole discretion;
- (iii) all equipment, inventory and tooling;
- (iv) all accounts, chattel paper, deposit accounts, instruments, documents, letter of credit rights, investment property, commercial tort claims and general intangibles;
- (v) all intellectual property, technical data, software, intellectual property licenses and related goodwill ("*IP*");
- (vi) all other personal property not otherwise described herein;
- (vii) all books and records pertaining to the Collateral; and
- (viii) to the extent not otherwise included, all proceeds, supporting obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing;

provided, however, that (x) the security interest described in clause (f)(2) above shall be subordinated to the liens granted in connection with the Credit Agreement and Second Lien Notes Indenture (as each may be amended, supplemented, refinanced, replaced or modified from time to time) and (y) DOE shall not use any licenses on IP granted to it by any Loan Party until an Event of Default has occurred or is continuing.

The security interests granted in such Collateral will be made in favor of the United States of America, acting by and through DOE (and including, without limitation, FFB) or agents designated by them to act.

The security interest in the Collateral (other than First Priority Collateral) shall be released if the security interest in favor of the lenders under the Credit Agreement is concurrently released upon any permitted sale or other permitted disposition thereof. The security interest in the First Priority Collateral shall be released upon any sale or other disposition thereof permitted by the Loan Documents.

15. Facility Fee

On the Financial Closing Date, the Borrower will pay to DOE a facility fee (the "*Facility Fee*") equal to the sum of one tenth of one percent (0.10%) of the Maximum Facility Amount.

16. Loan Administration

Servicing and monitoring duties with respect to the Loan will be performed by DOE in accordance with the Arrangement Agreement.

Transaction Documents

17. Loan Documents

The agreements to be entered into with DOE and FFB in connection with the Loan are expected to include the following, each of which must be satisfactory in form and substance to DOE, in its sole discretion (collectively, the "*Loan Documents*");

- (a) a Loan, Arrangement and Reimbursement Agreement (the "*Arrangement Agreement*") among the Loan Parties and DOE, setting forth, *inter alia*, (i) an undertaking by DOE to arrange for the Loan to be made by and through FFB, (ii) conditions to funding of the Loan, (iii) representations, warranties and covenants to be made by the Loan Parties in favor of DOE, (iv) events of default that will trigger a right to exercise remedies under the Loan Documents and (v) reimbursement obligations;
- (b) all documents and agreements necessary or desirable in connection with the making by FFB of the Loan (the "*Funding Agreements*"), including, without limitation:
 - (i) a Program Financing Agreement between DOE and FFB (the "*Program Financing Agreement*");
 - (ii) a Note Purchase Agreement among the Borrower, DOE and FFB (the "*Note Purchase Agreement*");
 - (iii) a future advance promissory note evidencing the Loan issued by the Borrower and payable to FFB (the "*Promissory Note*"); and
 - (iv) any other agreements required in connection with the funding of the Loan by FFB;
- (c) the Security Documents (as defined below);

- (d) a guarantee agreement pursuant to which the Guarantors will provide the Guarantees (the “*Guarantee*”); and
- (e) such other documents and agreements as may be required under the Program Requirements.

18. Security Documents

The security documents to be entered into in connection with the Loan are expected to include the following, each of which must be satisfactory to DOE, in its sole discretion, in form and substance and include detailed terms and conditions necessary and appropriate to protect the interests of the United States, including, without limitation, DOE and FFB, in the Collateral, including ensuring availability (and delivery, in the case of technical data including software and any other applicable assets) of all such property and Collateral, including, without limitation, the IP, other books and records, real property, physical assets and all other rights constituting such property or Collateral and necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of any part of such assets, property or Collateral (collectively, the “*Security Documents*”):

- (a) agreements pledging a first-priority security interest in all First Priority Collateral;
- (b) agreements regarding all IP constituting Collateral, if any;
- (c) agreements mortgaging certain real property interests of the Borrower (including Borrower’s leasehold interests and fee ownership interests) constituting Collateral;
- (d) consent of each Customer that holds any First Priority Collateral at such Customer’s premises to the granting of a perfected first-priority security interest in such First Priority Collateral to DOE; and
- (e) all other agreements and instruments necessary to create a perfected first-priority security interest under applicable law in the First Priority Collateral and a perfected security interest under applicable law in all other Collateral, including, without limitation, any necessary mortgages, financing statements and intercreditor agreements.

The Borrower will pay all costs in connection with the pledge, perfection and maintenance of the Collateral and the Security Documents, including, without limitation, registration, recording taxes, notarization, and filing fees and charges. In its sole discretion, DOE can require the use of a Collateral Trustee, the cost of which shall be paid by the Borrower. In such event, the Loan Documents will be modified to reflect such a Collateral Trustee.

19. Project Documents

The Loan Parties will enter into all agreements necessary for the consummation of the Projects (the “*Project Documents*”), each of which must be in form and substance satisfactory to DOE, in its sole discretion, including, without limitation, the following, documentation relating to specific milestones, as determined by the Applicant, and other agreements as may be identified by DOE’s further due diligence.

The Loan Documents and the Project Documents are collectively referred to as the "*Transaction Documents*".

Financial Closing, Loan Advances and Conditions Precedent

20. Conditions Precedent to the Financial Closing Date

The financial closing of the Loan is subject to closing conditions as are usual and customary for financings of this type, as are required under the Program Requirements or as are otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular, including, without limitation, satisfaction as of the date of such financial closing (the "*Financial Closing Date*") of the following conditions precedent, each of which must be to the satisfaction of DOE in its sole discretion:

- (a) Due Diligence Review. DOE shall have completed its business, legal, tax, accounting and environmental due diligence investigation and its bring-down due diligence investigation following the execution of the Conditional Commitment Letter of the Projects and all other matters related thereto, and of the Loan Parties and any applicable Affiliates thereof and the Customers (to determine that none of the Loans made to the Borrower will be used in respect of items for which any Customer is itself receiving a loan under the ATVM Program) and the results thereof shall be satisfactory in all respects to DOE in its sole discretion;
- (b) Organization of Loan Parties. Delivery of organizational documents in form and substance satisfactory to DOE, in its sole discretion, of the Loan Parties;
- (c) Receipt of Corporate Approvals. Delivery, in form and substance satisfactory to DOE, in its sole discretion, of certificates and documents evidencing the Loan Parties' receipt of all internal corporate approvals to enter into any Transaction Document to be executed in connection with the Loan and fully implement and perform the terms thereof;
- (d) Company Certificates. Delivery of secretary's certificates, resolutions and good standing certificates in form and substance satisfactory to DOE, in its sole discretion, of the Loan Parties;
- (e) Information. Delivery of a certificate of the Borrower and of the Parent certifying that, as of the Financial Closing Date, the information contained in the Application, attached as Exhibit A hereto, together with all other information delivered or furnished by or on behalf of the Loan Parties or any of their respective Affiliates (including all Securities and Exchange Commission ("*SEC*") filings by the Parent) to DOE, FFB or their respective designees, agents or representatives in connection with such Application, the Conditional Commitment Letter, including the Term Sheet, or the Transaction Documents and the transactions contemplated thereby do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified);

- (f) Transaction Documents. Execution and delivery of all Transaction Documents, in form and substance satisfactory to DOE, in its sole discretion, together with evidence that such Transaction Documents (i) contain all terms and conditions DOE, in its sole discretion, deems necessary or desirable to protect the interests of the United States, including, without limitation, DOE and FFB and (ii) are in full force and effect;
- (g) Security Interests. Evidence of perfection of all requisite security interests in the Collateral and all necessary waivers, amendments, approvals and consents authorizing the pledge of such Collateral (including the first-priority pledge of the First Priority Collateral);
- (h) Lien Searches. Receipt of lien searches, satisfactory to DOE, in its sole discretion, in each of the jurisdictions in which the Uniform Commercial Code financing statements or other filings should be made revealing no liens on the Collateral, aside from permitted liens;
- (i) Legal Opinions and Similar Documents. Delivery of such legal opinions that are usual and customary in secured financings, rendered by counsel to the Loan Parties, as well as any additional legal opinions, bring-down certificates, reliance letters, and similar documents as DOE may request;
- (j) Environmental Review. Satisfactory completion of the NEPA review process and confirmation by the Borrower that the Projects do not require any new environmental permits or modifications to existing environmental permits;
- (k) Permits. All environmental, regulatory, construction and other permits and approvals reasonably expected to be in place on or before the Financial Closing Date (consistent with the Key Milestones set forth in the Project Business Plan) shall be in place and not be subject to waiting periods or appeal;
- (l) Financial Statements and Financial Covenants. Delivery of (i) any financial statements and compliance certificates then required to be delivered by the Loan Parties, not later than fifteen (15) business days prior to the Financial Closing Date and (ii) a schedule demonstrating satisfaction of the Financial Covenants (as defined below) as of the most recent applicable date of determination;
- (m) Project Business Plan. Delivery of the Project Business Plan, including, but not limited to (i) an agreed Key Milestones schedule for the Projects, (ii) a schedule outlining the Borrower's anticipated advance requests with respect to the Loan and (iii) all major assumptions used therein, in each case approved by DOE, in its sole discretion;
- (n) Eligible Costs. Receipt of all information with respect to Eligible Costs incurred by the Borrower as of the Financial Closing Date, including such breakdowns of such information as DOE may request, all certified by an authorized officer of the Borrower;
- (o) Consents. Receipt of all consents and waivers required pursuant to any contractual provision or foreign government rule or regulation that would prohibit or prevent the Loan Parties from executing and performing their obligations under the Transaction

Documents, including consents necessary for DOE to exercise remedies provided by Section 27 hereof;

- (p) Customers' Consent. Receipt of evidence that the Borrower has obtained Customers' consent, to the extent required and to the extent any First Priority Collateral will be in the possession of or located at such Customers, to the granting of a perfected first-priority security interest in the First Priority Collateral to DOE;
- (q) Insurance. Receipt of satisfactory evidence, including, without limitation, a report and associated closing certificate from the Borrower's insurance advisor, that the Borrower has obtained (and/or maintained) the Required Insurance (as defined below);
- (r) Intellectual Property. Evidence that the Borrower has all intellectual property rights necessary to conduct the Projects;
- (s) Availability of Funds. Evidence that the proceeds of the Loan, when combined with other funds committed to the Projects, including any contingency funds, will be available and sufficient to carry out the Projects, and that such other committed funds (excluding proceeds of the Loan) will be available and sufficient to fund all Applicant Project Payments and pay the Facility Fee;
- (t) Collateral Value. Confirmation by the Borrower of the value of the First Priority Collateral (taking into account that the retooling, re-equipment and upgrade of certain portions of the Projects shall, as of then, have not yet begun), as set forth in a collateral value certificate (the "*Collateral Value Certificate*");
- (u) Payment of the Facility Fee. Payment of the Facility Fee due and payable on the Financial Closing Date;
- (v) Status as Eligible Applicant; Eligible Project. Certification of the Borrower that since execution of the Conditional Commitment Letter no event has occurred that affects or alters (i) Borrower's status as an Eligible Applicant, as described in the Applicable Regulations and (ii) the designation of the Projects as Eligible Projects, as defined in the Applicable Regulations;
- (w) Evidence of no Judgment Liens. Evidence satisfactory to DOE, in its sole discretion, that none of the Loan Parties nor any of their respective subsidiaries has a judgment lien against any of their respective properties for a debt owed to the United States of America;
- (x) Lobbying Certification. Certification of the Borrower that is required to be filed by recipients of federal loans regarding lobbying, in the form set forth in Appendix A to 31 CFR Part 21 and, if required under 31 CFR Part 21, disclosure forms to report lobbying, in the form set forth in Appendix B to 31 CFR Part 21; and
- (y) Other Documents and Information. Receipt by DOE and FFB of any other certificates, documents, agreements and information in respect of the Projects, the Collateral and the Loan Parties as may have been requested.

21. Conditions Precedent to Each Advance Date

Each Advance of a Loan, including the initial Advance, is subject to the satisfaction as of the date of such Advance (the "*Advance Date*") of the following conditions precedent, which must be to the satisfaction of DOE in its sole discretion:

- (a) Advance Request and Invoices. Receipt by DOE, no later than ten (10) business days prior to such Advance Date, of an advance request from the Borrower, in sufficient detail and including wire transfer instructions and copies of invoices (if requested by DOE, in its sole discretion), together with Borrower certification as to the satisfaction of all conditions precedent to such Advance;
- (b) Representations and Warranties. All representations and warranties shall be true and correct in all material respects; provided that any representation and warranty relating solely to an earlier date shall be true and correct in all material respects as of such date;
- (c) No Event of Default. No Event of Default or event which, if it continues uncured, with notice or lapse of time would become an Event of Default shall have occurred and be continuing, before and after giving effect to the subject Advance;
- (d) No Material Adverse Effect. No event, change or condition shall have occurred since September 30, 2009 (the date of the most recently ended quarter in the latest 10-Q publicly filed as of the date hereof) that, individually or in the aggregate, has had, or could reasonably be expected to have, a material adverse effect on the business, property, operations or condition (financial or otherwise) of the Parent and its subsidiaries, taken as a whole (a "*Material Adverse Effect*");
- (e) Key Milestones. Satisfactory evidence that the Borrower has achieved and maintained the Key Milestones applicable to the Project that is the subject of the Advance, and that the proceeds of the subject Advance are being applied towards the payment of the related Eligible Costs;
- (f) Advance Proceeds. Delivery to DOE of an officer's certificate of Borrower in form and substance acceptable to DOE, in its sole discretion, to the effect that proceeds of such Advance will be used to pay Eligible Costs then due and payable, together with a description in sufficient detail of such Eligible Costs;
- (g) Aggregate Advances. Evidence that the aggregate principal amount of all outstanding Advances, after giving effect to such Advance, does not exceed the Project Maximum Loan Amount;
- (h) Applicant Project Payments and Eligible Cost Overruns. Satisfactory evidence that (i) the Borrower has paid the Applicant Project Payments required to have been paid as of such Advance Date, (ii) the amounts corresponding to the Applicant Project Payments were, or will be, applied towards Eligible Costs, (iii) immediately following such Advance Date, the aggregate amount of Applicant Project Payments made by the Borrower shall equal or exceed 20% of the proceeds of the Total Eligible Costs previously funded or to be funded with the current Advance, (iv) the Borrower has paid

any Eligible Cost Overruns required to have been paid as of such Advance Date and (v) the Borrower has paid any other applicable costs incurred in connection with the Projects required to have been paid as of such Advance Date;

- (i) No Litigation. No material legal or arbitral proceedings are pending or threatened against any of the Loan Parties that could reasonably be expected to have a Material Adverse Effect and that has not otherwise been disclosed to and consented to by DOE;
- (j) No Illegality. No applicable law or regulation is in effect that restrains, prevents or imposes materially adverse conditions upon the transactions contemplated hereby;
- (k) Lien Waivers. With respect to the First Priority Collateral, certification by the Borrower that (i) any unpaid balances or unsettled claims, if any, with contractors or suppliers have been adequately paid and that those being contested or negotiated in good faith are bonded or otherwise provisioned to the satisfaction of DOE, in its sole discretion, and (ii) all mechanics liens or other liens of such contractors or suppliers (including with respect to any payments made out of the subject Advance) have been released to the satisfaction of DOE, in its sole discretion;
- (l) Certificates. Receipt of all necessary certifications and delivery of officer's certificates and other customary certificates;
- (m) Legal Opinions. Delivery of such legal opinions, bring-down certificates, reliance letters, and similar documents as DOE may request;
- (n) Governmental Requirements. Satisfaction of (i) all requirements and approvals pursuant to the Program Requirements and (ii) all other statutory, regulatory, or other governmental requirements of general applicability to Section 136 applicants;
- (o) Governmental Approvals. Certification by the Borrower that all material governmental approvals, permits (including, without limitation, building permits or notices of commencement) or consents not previously delivered and required for construction or operation of the Projects or achievement of the applicable Key Milestones, as required by the Transaction Documents to be in place prior to such Advance Date, have been obtained and are in full force and effect, and, to the extent requested by DOE, delivery to DOE of copies of such approvals, permits or consents;
- (p) Prior Advances. Evidence that the proceeds of all Advances made with respect to the immediately preceding calendar quarter (or, if no Advances were made with respect to the immediately preceding calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Advances were made) have been applied as set forth in the most recent Quarterly Project Certificate relating to such Advances or as otherwise approved by DOE in its sole discretion;
- (q) Perfection of Security Interests. If requested by DOE, evidence that all actions necessary or, in the opinion of DOE, desirable to create and maintain the United States', including, without limitation, DOE's and FFB's, perfected interests in the Collateral (including after-acquired Collateral) have been taken;

- (r) Davis-Bacon Act. Certification by the Borrower of compliance with the obligation to pay prevailing wages to all laborers and mechanics employed by contractors or subcontractors during construction, alteration or repair that is financed through the ATVM Program;
- (s) No Change to Project Completion Outside Date. Certification by the Borrower certifying that the completion of the Projects are reasonably expected to occur by the outside completion dates specified in the Project Business Plan; and
- (t) Additional Documents. Such other documents, certifications or consents relating to the Projects or the matters contemplated by the Transaction Documents as DOE may request.

Representations, Covenants and Defaults

22. Representations and Warranties

The Loan Documents will contain such customary and appropriate representations and warranties regarding the Loan Parties as are usual and customary for financings of this kind or that are substantially similar to those in the Credit Agreement or otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with qualifications, exceptions and schedules to be agreed), including, without limitation:

- (a) due organization and valid existence;
- (b) good standing and qualification to do business;
- (c) power and authority (including all authority necessary for completion of the construction and operation of the Projects);
- (d) capitalization and ownership;
- (e) subsidiaries of the Loan Parties;
- (f) solvency;
- (g) status of Borrower as an Eligible Applicant, as described in the Applicable Regulations;
- (h) enforceability of the Transaction Documents;
- (i) no conflicts;
- (j) entering into and performing obligations in respect of the Loan and the Guarantee does not breach any agreement relating to any Loan Party's other indebtedness;
- (k) no consents or approvals required to consummate transactions (except as have been obtained and are in full force and effect);
- (l) material agreements;

- (m) no litigation (except as scheduled);
- (n) debt;
- (o) no judgments or orders (except as scheduled);
- (p) no force majeure affecting the Projects;
- (q) no defaults relating to the Projects or actual or incipient Events of Default;
- (r) compliance with law and Program Requirements;
- (s) Investment Company Act and other regulatory matters;
- (t) no margin stock; proceeds of Loan shall not be used to purchase margin stock in violation of applicable law;
- (u) no corrupt or prohibited practices;
- (v) financial statements, disclosure and projections, Project Business Plan;
- (w) title to properties, or valid leases, relating to the Projects;
- (x) no liens related to the Projects or in respect of the Collateral, except as scheduled or permitted;
- (y) operation of business;
- (z) Borrower ownership and sufficiency of assets and necessary rights with respect to the Projects;
- (aa) availability and adequacy of utility and technology rights and other services relating to the Projects;
- (bb) the Borrower owns, has contractual rights, or otherwise has the right to use any and all personal property, real estate and IP necessary to conduct the Projects, and has entered into any license agreement with the Parent or any of its Affiliates, which provide Borrower with all rights to all of the IP owned or licensed by the Parent or its Affiliates that is necessary for the timely performance of the Projects;
- (cc) perfection and priority of security interests relating to the Collateral;
- (dd) location of books and records;
- (ee) taxes;
- (ff) necessary creditor and other third party consents and government permits and approvals relating to the borrowing of the Loan, the conduct of the Projects, the granting of any Collateral and the transfer of any portion thereof to DOE or any other third party, the

execution and delivery of the Transaction Documents and any other transactions contemplated thereby;

- (gg) environmental and safety matters relating to the Projects;
- (hh) labor matters and employment agreements, including, without limitation, collective bargaining agreements and activities and a certification with respect to payment of prevailing wages with respect to the Projects;
- (ii) ERISA matters and employee benefit plan liabilities, including, without limitation, representations as to funded status, withdrawal liability, ERISA controlled group liabilities and reportable events;
- (jj) accuracy of representations and warranties in other Project Documents;
- (kk) location of chief executive office and chief operating office;
- (ll) key personnel;
- (mm) USA Patriot Act;
- (nn) no embargoed person;
- (oo) no fraudulent conveyance;
- (pp) insurance;
- (qq) coordination of public statements by Borrower with DOE/FFB;
- (rr) no restricted payment has been made;
- (ss) no event having a material adverse effect on any Project, any Loan Party, the enforceability of the Transaction Documents or the value of the Collateral since the date of the Conditional Commitment Letter;
- (tt) no material change to the Project Business Plan (including the Key Milestones); and
- (uu) representations and warranties reflecting clauses 2(A), 2(B), and 2(C) of the Conditional Commitment Letter Representations.

23. Financial Covenants

The Loan Documents will contain provisions regarding the Parent's compliance at the end of each fiscal quarter, on a consolidated basis, with the financial tests set forth below based upon the Credit Agreement (as such Credit Agreement may be amended or modified from time to time, which amendments and modifications may be made subject to the provisions of Section 29 hereof) (the "*Financial Covenants*").

- (a) Consolidated Net Leverage Ratio. The Parent's Consolidated Total Debt (to be defined consistently with the Credit Agreement in the Loan Documents) less the aggregate amount of unrestricted cash and cash equivalents of the Parent and its subsidiaries in excess of \$50,000,000 (such excess amount not to exceed \$100,000,000) to Consolidated EBITDA (to be defined consistently with the Credit Agreement in the Loan Documents) as of the last day of any period of four consecutive fiscal quarters of the Parent ending with any fiscal quarter during any period set forth below shall not exceed the ratio set forth below opposite such period:

Period	Consolidated Net Leverage Ratio
Third Quarter 2009	7.90 to 1.00
Fourth Quarter 2009	6.60 to 1.00
First Quarter 2010	5.50 to 1.00
Second Quarter 2010	5.00 to 1.00
Third Quarter 2010	4.75 to 1.00
Fourth Quarter 2010	4.50 to 1.00
First Quarter 2011	4.00 to 1.00
Second Quarter 2011	3.75 to 1.00
Third and Fourth Quarters 2011	3.50 to 1.00
Fiscal Year 2012 and thereafter	3.50 to 1.00

The "Consolidated Net Leverage Ratio" shall otherwise be defined consistently with such term as defined under the Credit Agreement.

- (b) Consolidated Interest Coverage Ratio. The Parent's Consolidated EBITDA to Consolidated Interest Expense (to be defined consistently with the Credit Agreement in the Loan Documents) for any period of four consecutive fiscal quarters of the Parent ending with any fiscal quarter during any period set forth below shall not be less than the ratio set forth below opposite such period:

Period	Consolidated Interest Coverage Ratio
Third Quarter 2009	1.55 to 1.00
Fourth Quarter 2009	1.60 to 1.00
First Quarter 2010	2.00 to 1.00
Second Quarter 2010	2.25 to 1.00
Third Quarter 2010	2.30 to 1.00
Fourth Quarter 2010	2.35 to 1.00
First Quarter 2011	2.55 to 1.00
Second Quarter 2011	2.55 to 1.00
Third and Fourth Quarters 2011	2.55 to 1.00
Fiscal Year 2012 and thereafter	2.75 to 1.00

Notwithstanding the foregoing, if (i) the Required Lenders under the Credit Agreement have consented to non-compliance with, or otherwise waived a breach of, any of the financial

covenants under the Credit Agreement or (ii) the requisite security holders under the Second Lien Notes Indenture have consented to non-compliance with, or otherwise waived a breach of, any of the financial covenants under the Second Lien Notes Indenture, DOE shall not unreasonably withhold any similar consent or waiver to a breach of any of the Financial Covenants to the extent there has been a breach thereunder.

24. Affirmative Covenants

In addition to the other covenants described herein, the Loan Documents will contain such affirmative covenants that are substantially similar to those in the Credit Agreement (including similar baskets and exceptions) or otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with qualifications, exceptions and schedules to be agreed) from the Loan Parties, including, without limitation, regarding:

- (a) use of proceeds of the Loan;
- (b) maintenance of existence;
- (c) conduct of the Projects substantially in accordance with the Project Business Plan;
- (d) operation and maintenance of the Projects and all constituent Collateral;
- (e) maintenance of security interests relating to the Collateral;
- (f) to the extent necessary, granting of additional collateral and inclusion of additional obligors having an interest in the property acquired or IP developed in connection with the Projects;
- (g) performance of the Transaction Documents and material agreements by the Loan Parties;
- (h) delivery by the Loan Parties of (i) within 90 days after the end of each fiscal year of the Parent, a copy of the audited consolidated balance sheet of the Parent and its consolidated subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows (or such other similar or additional statement then required by the SEC for annual reports filed pursuant to the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")) for such year, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, or other material qualification or exception, by an independent certified public accountant of nationally recognized standing, (ii) within 45 days after the end of each of the first three quarterly periods of each fiscal year of the Parent, the unaudited consolidated balance sheet of the Parent and its consolidated subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows (or such other or similar or additional statement then required by the SEC for quarterly reports filed pursuant to the Exchange Act) for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by the chief financial officer, treasurer or controller of the Parent (each, a "*Responsible Officer*") as being fairly stated in all material respects (subject to

normal year-end audit adjustments) and (iii) customary certificates of the independent certified public accountant (in the case of clause (i) above) and of a Responsible Officer (in the case of clause (ii) above).

- (i) delivery of a description of any material changes to any existing, and copies of any new, Project Documents;
- (j) delivery of all SEC filings by the Parent and press releases related to the Projects;
- (k) delivery of a description of any claims brought against the Loan Parties or any labor disputes, in each case that could reasonably be expected to have a Material Adverse Effect;
- (l) delivery of quarterly operating budgets and Project reports;
- (m) delivery of default notices, mandatory prepayment event notices and mandatory redemption event notices that are consistent with similar requirements under the Credit Agreement and the Second Lien Notes Indenture, and notices of other material events and information, including, without limitation, (i) material transactions of the Loan Parties or their subsidiaries (taken as a whole) related to the Projects, (ii) material casualty and similar events with respect to Collateral, and receipt of material insurance or similar proceeds with respect to Collateral, (iii) events having a Material Adverse Effect, (iv) change of control and (v) events or breaches that would reasonably be expected to permit or cause the acceleration of amounts due and payable under any indebtedness of the Loan Parties that, in each case, has an aggregate principal amount of at least \$50,000,000 outstanding, together with a statement from such Loan Party detailing how it plans to address such event or remedy such breach;
- (n) as requested, delivery of updates on the Project Business Plan and a report discussing the status of Emissions Reducing Technology Systems, including any material deviations between actual and projected Key Milestones and actual and projected budget items (provided that any change to the substance of any Key Milestones in the Project Business Plan resulting from any such deviations shall receive the consent of DOE, acting in its sole discretion);
- (o) delivery of a quarterly certificate (the "*Quarterly Project Certificate*") for each quarter included wholly or partially within the Loan Availability Period, by an authorized financial officer of the Borrower certifying that the proceeds of the Advances for such calendar quarter were used to pay incurred Eligible Costs; *provided, that*, upon the request of DOE, no more frequently than once in any calendar year wholly or partially within the Loan Availability Period, or as many times as deemed appropriate by DOE in its sole discretion upon the occurrence and continuance of an Event of Default, Borrower will obtain the review by the Borrower's independent accounting firm, which shall be reasonably satisfactory to DOE, to confirm (i) the progress of the Projects, (ii) whether the proceeds of the various Advances distributed to the Borrower during the relevant review period were in each case used by the Borrower to pay for such Eligible Costs of the applicable Project incurred as of the relevant Advance Date in accordance with the

terms of the Loan Documents and (iii) the compliance with the terms of the Loan Documents; *provided, further*, that FFB, DOE and the U.S. Government Accountability Office and its representatives and advisors may from time to time audit any and all statements or certificates submitted to DOE;

- (p) maintenance of and compliance with permits, licenses, approvals and consents in connection with the Projects;
- (q) compliance with laws and Program Requirements in connection with the Projects;
- (r) compliance with Office of Foreign Assets Control rules and regulations;
- (s) subject to reasonable measures implemented to ensure confidentiality of information provided, consistent with FOIA, the Program Requirements and other applicable law, cooperation with DOE requests for continuing due diligence reviews with respect to the Loan Parties, the Collateral and any aspect relating to the Projects, including, without limitation, DOE requests for reports on the technical and financial performance of the Projects;
- (t) compliance with environmental and safety laws, and other environmental and safety matters, including, without limitation, with respect to compliance with the National Environmental Policy Act of 1969 ("*NEPA*") and delivery of any environmental audits and assessments with respect to the Projects;
- (u) maintenance of operations in a manner which will not require registration under the Investment Company Act;
- (v) maintenance of self- or third-party insurance as usual and customary or as may be otherwise required by the terms of any leases of Collateral, and application of proceeds thereof;
- (w) payment of taxes, etc.;
- (x) maintenance of adequate accounting, management information and cost control systems;
- (y) maintenance of internationally recognized independent auditors;
- (z) maintenance of books and records and allowing inspection thereof, including (i) such records as are necessary to facilitate an effective and accurate audit and performance evaluation of the Projects and confirmation of compliance with the Loan Parties' obligations under the Loan Documents, as required by the Program Requirements, and (ii) delivery to FFB, DOE and the U.S. Government Accountability Office and its representatives and advisors with such access rights as required by the Program Requirements, including, without limitation, access to each Project site and ancillary facilities (and allowing DOE and its representatives to discuss the Loan Parties' affairs, finances and accounts with the Loan Parties' officers and auditors) at all reasonable times following reasonable advance notice in order to monitor the performance of the Projects and compliance with the Loan Parties' obligations under the Loan Documents;

- (aa) maintenance of properties with respect to the Collateral;
- (bb) maintenance of IP, including compliance with all terms and conditions of all material license agreements relating to the Projects;
- (cc) assurance that the Borrower will obtain the right to use IP that is later acquired or developed by the Parent and/or its Affiliates and that is necessary for the conduct of the Projects;
- (dd) compliance with contractual obligations relating to the Projects;
- (ee) compliance with debarment regulations;
- (ff) disclosure and management of cost overruns relating to the Projects;
- (gg) delivery of updated Collateral Value Certificates, as requested by DOE from time to time;
- (hh) ongoing obligation to pay prevailing wages to all laborers and mechanics employed by contractors or subcontractors during construction, alteration, repair or any other type of work that is financed through the ATVM Program;
- (ii) delivery of additional information at the request of DOE or FFB;
- (jj) notification of any changes to charter or organization documents; and
- (kk) customary further assurances.

25. Negative Covenants

In addition to the other covenants described herein, the Loan Documents will contain such negative covenants that are substantially similar to those in the Credit Agreement (except as set forth below) or otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with qualifications, exceptions and schedules to be agreed), from the Loan Parties, including, without limitation, regarding:

- (a) no material change to any Project, except with the prior written consent of DOE, acting in its sole discretion;
- (b) prohibition on incurring additional debt or guarantees (except to the extent such additional debt or guarantee is permitted to be incurred pursuant to the Second Lien Notes Indenture) (the “*Prohibition on Additional Indebtedness*”);
- (c) prohibition on granting any additional lien on any of the Collateral that would degrade DOE’s secured position and relative lien priority (except (i) to the extent such additional liens arise under the Credit Agreement or Second Lien Notes Indenture (and any replacement or refinancing of either) to secure the obligations thereunder, (ii) customary permitted mechanics, workers compensation and similar liens, (iii) equipment leases and (iv) other limited permitted liens to be agreed) (the “*Prohibition on Additional Liens*”);

- (d) limitation on dividends, distributions, stock redemptions and other restricted payments (the "*Restricted Payments*") based on the Second Lien Notes Indenture;
- (e) limitation on acquisitions and dispositions of assets;
- (f) [Intentionally Omitted];
- (g) no merger, consolidation, or similar action involving a Loan Party unless (i) such Loan Party remains the surviving entity, (ii) the successor entity assumes all obligations, including all guarantee obligations, under the Transaction Documents to the extent it would be eligible under the Program Requirements, or (iii) DOE has given prior written approval, in its sole discretion, to such merger, consolidation or similar action;
- (h) [Intentionally Omitted];
- (i) limitation on termination, amendment or waiver of any provision of any license agreement with the Parent and its Affiliates necessary for the Borrower to conduct the Projects, or any other Project Document to which the Borrower is a party, it being understood that Borrower may not amend or modify such agreements in any manner adverse to the interests of DOE, or terminate such agreements, without the prior written consent of DOE, which shall not be unreasonably withheld or delayed;
- (j) limitation on entering into transactions with Affiliates with respect to the Projects other than pursuant to documents or agreements on an arm's length basis (subject to certain exceptions to be agreed);
- (k) no material modifications of the Project Business Plan and of the substance of any Key Milestones without the prior written consent of DOE;
- (l) [Intentionally omitted].
- (m) no use of proceeds of the Loan to pay interest payments on the Loan, administrative or other fees relating to the Loan or any other amounts under the Loan Documents;
- (n) no abandonment of any material IP necessary for the conduct and performance of the Projects;
- (o) prohibition on the Borrower incurring or suffering to exist any Indebtedness (to be defined in the Loan Documents) owing to Parent or any of its Affiliates (such Indebtedness, "*Intercompany Debt*") unless the aggregate amount of all such Intercompany Debt does not have a Material Adverse Effect on the Projects or the repayment of the Advances for such Projects or the promissory note or other instrument evidencing such Intercompany Debt includes the following provisions, in a form to be included in the definitive Transaction Documents, pursuant to which the lender agrees, by acceptance of the note, (i) to acknowledge the subordination of such Intercompany Debt to the Loan, (ii) that the lender's claim against Borrower in a bankruptcy or similar proceeding relating to Borrower based on such Intercompany Debt shall be subordinated to the payment in full of the Loan (including post-petition interest), provided however,

that the Borrower shall be permitted to repay such Intercompany Debt to the extent reasonably necessary to continue the operations of the business of Borrower in the ordinary course and to the extent such repayments have been approved by the bankruptcy court, and (iii) that in a bankruptcy or similar proceeding relating to Borrower, or upon and during the continuation of any default or Event of Default, while any of the borrowings under the Loan are outstanding, all holders of the Intercompany Debt obligations (except Intercompany Debt obligations that are generally repaid in the ordinary course of business) shall forbear from exercising remedies against the Borrower or its assets, and/or such holders of the subordinated obligations shall cede control of such obligations and collateral rights to the holders of the Loan;

- (p) no action, or inaction by Borrower that would cause (i) a Project not to be a qualifying technology (within the meaning of 10 CFR Part 611), (ii) the activities of the Borrower not to constitute eligible projects (within the meaning of 10 CFR Part 611) or (iii) the products manufactured in connection with the Projects to fail to qualify for the ATVM Loan Program; and
- (q) such additional negative covenants, substantially similar to the negative covenants in the Credit Agreement (as such Credit Agreement may be amended and modified from time to time, which amendments and modifications may be made subject to the provisions of Section 29 hereof).

26. Events of Default

The Loan Documents will include such events of default (the "Events of Default") as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with materiality qualifications, exceptions, grace and cure periods to be agreed), including, without limitation:

- (a) failure to make payments when due (including, without limitation, failure to make any periodic scheduled payments of principal or interest, any mandatory prepayments or redemptions, etc.);
- (b) cross default to include (i) payment default in respect of any indebtedness of any Loan Party in excess of \$50,000,000 if such default causes the acceleration, or permits the acceleration, of such debt, (ii) any other event occurs or condition exists under any other indebtedness of any Loan Party in excess of \$50,000,000 if such event or condition causes the acceleration, or permits the acceleration, of such debt or (iii) any acceleration of any other indebtedness of any Loan Party in excess of \$50,000,000;
- (c) outstanding principal amount of the Loan exceeds the Project Maximum Loan Amount;
- (d) material breach of representations and warranties under any Loan Documents;
- (e) breach of covenants under any Loan Documents (including the financial covenants);
- (f) breach by any Guarantor of any provision under the Guarantee;

- (g) admission by any Loan Party of its inability to, or intention not to, perform material obligations under the Loan Documents;
- (h) default by any Loan Party in the performance of any Project Document;
- (i) failure to fund when required with respect to the Applicant Project Commitment;
- (j) loss or impairment of government permits or approvals by any Loan Party that could reasonably be expected to have a Material Adverse Effect on a Project or the repayment of the Advances for such Project;
- (k) bankruptcy, insolvency or dissolution or other similar events affecting any Loan Party;
- (l) unsatisfied judgments against any Loan Party in excess of an agreed threshold or non-monetary judgments that could reasonably be expected to have a Material Adverse Effect on a Project or the repayment of the Advances for such Project;
- (m) any ERISA event that could reasonably be expected to have a Material Adverse Effect;
- (n) occurrence of specified force majeure events (fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot, civil commotion) that could reasonably be expected to have a Material Adverse Effect on a Project or the repayment of the Advances for such Project, and continuation thereof for 180 days;
- (o) condemnation or assumption of custody of all or any substantial part of the property of any Loan Party by any governmental authority or any governmental authority taking action to displace the management of any Loan Party;
- (p) lapse or termination of any Required Insurance;
- (q) occurrence or reasonable expectation of occurrence of any event with respect to any Project that could reasonably be expected to have a Material Adverse Effect on such Project or the completion thereof, or on the ability of the applicable Loan Party to perform its obligations under any Transaction Documents to which it is a party, subject to appropriate cure periods, or that would imply a material adverse change to such Project;
- (r) failure generally, or admission in writing, of inability to pay debts when such debts become due;
- (s) impairment of the first-priority security interest in First Priority Collateral or of the security interest in all other Collateral;
- (t) invalidity or unenforceability of any Loan Documents or any Project Documents (other than immaterial documents not referred to herein and to be agreed);
- (u) any of the Loan Documents or Project Documents shall cease to be in full force and effect or any Loan Party or relevant counterparty so asserts; and

- (v) failure to comply with applicable laws when such failure could reasonably be expected to have a Material Adverse Effect on a Project or the repayment of the Advances for such Project;

provided, that, to the extent an Event of Default is applicable on a per Project basis, such Event of Default shall apply only to such Project, and the individual Projects and Advances under the Loan shall not be cross-defaulted to other Projects or Advances under the Loan.

27. Remedies

Upon the occurrence of an Event of Default, the Loan Documents will include usual and customary remedies as well as such other rights as may be required under the Program Requirements to allow DOE to dispose of the Collateral (and in the case of Collateral that is not First Priority Collateral, subject to the rights of holders of prior liens in such Collateral) or otherwise protect the interests of the United States or the public interest, including, without limitation, DOE's ability to lock out the physical Collateral and prevent access to or prevent the operation by the Borrower of any of the Collateral, and otherwise to exercise all rights necessary to engage in the business contemplated for the Projects. As a condition precedent to the financial closing of the Loan, the Borrower shall provide (and cause any relevant third parties to provide) access rights to any location in which First Priority Collateral is held or is reasonably expected to be held to effectuate such remedies.

Additional Provisions of Loan Documents

28. Required Insurance

The Borrower will maintain or cause to be maintained in full force and effect at all times insurance with financially sound insurers and reinsurers (including appropriate self insurance and insurance provided by any affiliated captive insurance companies) (the "*Required Insurance*") against loss or damage of the kinds and in the amounts and with such risk retentions that in the reasonable, good faith opinion of the Borrower are adequate, appropriate and customary for the conduct of its, and in its line of, business.

Each such policy insuring against loss of or damage to the Collateral provided by third-parties (other than liability policies) will name the United States of America, including, without limitation, DOE and FFB, as loss payee and additional insured to the extent of the aggregate amounts outstanding under the Loan. Each insurance policy will provide for 30 days' written notice to DOE prior to termination or expiration of any coverage and such other endorsements as DOE may require. The Loan Documents will specify a list of insurance policies to which the United States of America, including, without limitation, DOE and FFB, shall be so named as loss payee and additional insured.

29. Amendments.

No amendment, modification or waiver of any provision of any Loan Document nor consent to any departure by any Loan Party therefrom shall in any event be effective unless:

- (a) Amendments and Waivers. The amendment, modification or waiver shall be in writing and signed by the applicable Loan Parties and by DOE and/or FFB, as applicable, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; and
- (b) Federal Credit Reform Act Compliance. DOE performs all accounting and other requirements related to such amendment, modification or waiver arising out of the Federal Credit Reform Act of 1990, as amended (codified at 2 U.S.C. § 661 et seq.), including but not limited to:
 - (i) analysis of the amendment, modification or waiver to determine whether it increases the costs of the Loan;
 - (ii) making a determination whether budget authority for the additional cost has been provided in advance in an appropriations Act; and
 - (iii) paying any such increased costs from the credit program account into the financing account and recording such increased costs in the fiscal year in which the Loan is disbursed or the costs altered.

Notwithstanding anything to the contrary contained herein, the Loan Documents shall provide that, so long as no Event of Default has occurred and is continuing, in the event any provision in the Credit Agreement or the Second Lien Notes Indenture (including any successor debt instrument to either such instrument) relating to: (1) the Financial Covenants provided in clauses (a) and (b) of Section 23 hereof; (2) the Negative Covenants provided in clauses (e), (j) and (q) of Section 25 hereof; (3) the Restricted Payments provided in clause (d) of Section 25 hereof; (4) the Mandatory Redemption provisions relating to a change of control provided in clause (c)(i) of Section 14 hereof; (5) the Prohibition on Additional Indebtedness provided in clause (b) of Section 25 hereof; (6) the Prohibition on Additional Liens provided in clause (c) of Section 25 hereof; or (7) any other provision on which a comparable Loan Document provision has been directly and substantively based is amended and modified, in whole or in part, DOE shall, promptly upon request by Borrower, provide written approval to any amendment or modification to such Loan Document provision to the extent necessary to be substantially similar to the Credit Agreement or the Second Lien Notes Indenture (or the applicable successor debt instrument to either such instrument), as so amended or modified. If any such amendment or modification to the Credit Agreement or the Second Lien Notes Indenture (or the applicable successor debt instrument to either such instrument) is made after an Event of Default has occurred and is continuing, DOE shall not unreasonably withhold its consent to any similar amendment or modification under the Loan Documents. Any written approval or consent to any amendment or modification shall be provided prior to effectiveness to any such amendment or modification.

30. Indemnification

The Loan Parties shall indemnify and hold harmless the United States, including DOE and FFB, and each other governmental agency or instrumentality of the United States, and their respective designees, agents, and contractors, and all of their respective directors, officers and employees (each, an "*Indemnified Person*") from and against (and will reimburse each Indemnified Person

as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel, but other than the expenses incurred by DOE in connection with the preparation, negotiation, execution and delivery of the Conditional Commitment Letter, Term Sheet and the Transaction Documents), but excluding in all cases consequential or punitive damages, to which such Indemnified Person may become subject arising out of or relating to (a) the execution or delivery of the Transaction Documents or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (b) the enforcement or preservation of any rights under the Transaction Documents or any agreement or instrument prepared in connection herewith or therewith, (c) the Loan or the use or proposed use of the proceeds thereof, (d) any part of any Project or certain environmental matters relating to or affecting the Projects to be determined or (e) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Borrower or any of its Affiliates or otherwise, and regardless of whether any Indemnified Person is a party thereto; *provided, however*, that such indemnity shall not apply to the extent the loss, claim, damage, liability or other expense results from the gross negligence or willful misconduct of the Indemnified Person or a material breach of the Indemnified Person's obligations hereunder, in each case, as determined by a court of competent jurisdiction in a final, non-appealable order.

31. Governing Law

All Loan Documents and Security Documents, and the rights and obligations of the parties thereunder, shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law or the enforceability or validity of any document recording or perfecting any lien, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

Arrangement Agreement Related Provisions
(from Applicable Regulations and Statutes)

Set forth below is a summary of the relevant provisions of the Applicable Regulations pertaining to the required terms and conditions of the Arrangement Agreement:

Section 611.105(d)

Pursuant to Section 611.105(d) of the Applicable Regulations, prior to execution by DOE of an Arrangement Agreement, DOE must ensure the following requirements and conditions, which must be specified in the Arrangement Agreement, are satisfied:

- (1) The Borrower is an Eligible Applicant as defined in the Applicable Regulations;
- (2) The Project is an Eligible Project as defined in the Applicable Regulations;
- (3) The principal amount of the Loan is limited to no more than 80 percent of reasonably anticipated Total Project Costs;
- (4) The Loan funds will be disbursed only to meet immediate cash disbursement needs of the Borrower and not for investment purposes, and any investment earnings obtained in excess of accrued interest expense will be returned to the United States Government; and
- (5) The Arrangement Agreement contains such other documents, representations, warrants and covenants as DOE may require.

Section 611.108(a)

Pursuant to Section 611.108(a) of the Applicable Regulations, the Arrangement Agreement and other documents related thereto must provide that:

- (1) DOE and the Applicant, in conjunction with the Federal Financing Bank if necessary, has taken and is obligated to take those actions necessary to perfect and maintain liens, as applicable on assets which are pledged as collateral for the loan;
- (2) Upon default by the Borrower, the holder of pledged collateral is obligated to take actions as DOE may reasonably required to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets.
- (3) DOE shall reimburse the holder of collateral for reasonable appropriate expenses incurred in taking actions required by DOE.

Section 611.108(b)

Pursuant to Section 611.108(b) of the Applicable Regulations, the Arrangement Agreement and other documents related thereto must provide that:

(1) In the event of a default, DOE may enter into such contracts as the Secretary determines are required to preserve the collateral.

(2) The cost of the contracts referenced in (1) above may be charged to the Borrower.

Section 611.109(a)

Pursuant to Section 611.109(a) of the Applicable Regulations, the Arrangement Agreement and related documents must contain access and audit provisions which provide, in substance, as follows:

(1) DOE, in conjunction with the Federal Financing Bank, as applicable, and the Borrower must keep such records concerning the project as are necessary, including the Application, Term Sheet, Conditional Commitment Agreement, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the loan, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and Comptroller General or their duly authorized representatives must have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower or DOE, as applicable. Such inspection may be made during regular office hours of the Borrower or DOE, or at any other mutually convenient time.

Section 611.109(b)

Pursuant to Section 611.109(b) of the Applicable Regulations, the Arrangement Agreement and related documents must contain access and audit provisions which provide, in substance, as follows:

(1) The Secretary may from time to time audit any or all statements or certificates submitted to the Secretary.

(2) Borrower must make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits.

(3) Borrower must represent that it has within its rights access to all financial and operation records and data relating to the project financed by the Loan, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operation records and data available to the Secretary.

(4) In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

Section 611.109(c)

Pursuant to Section 611.109(c) of the Applicable Regulations, the Arrangement Agreement and related documents must provide that:

- (1) Loan funds are being expended efficiently and effectively if documentation submitted and audits conducted under this section demonstrate that the Borrower is making appropriate progress toward achieving the purpose for which the Loan was originally made.

Section 611.110(a)

Pursuant to Section 611.110(a) of the Applicable Regulations, the Arrangement Agreement must contain provisions providing that the Loan Documents may not be modified, in whole or in part, without the prior written approval of DOE.

Section 611.110(b)

Pursuant to Section 611.110(b) of the Applicable Regulations, the Arrangement Agreement must contain provisions providing that, upon prior written approval by DOE and the Federal Financing Bank, a certification by the assignor that the assignee is an Eligible Applicant as described in §611.100 of the Applicable Regulations, and subject to other provisions of the Applicable Regulations, a Borrower may assign or transfer its interest in the Loan, including the Loan Documents, to a party that qualifies as an Eligible Applicant. This foregoing does not apply to transfers which occur by operation of law.

Section 611.111(a)

Pursuant to Section 611.111(a) of the Applicable Regulations, the Arrangement Agreement must provide that, in the event that the Borrower has defaulted in the making of required payments of principal or interest, and such default has not been cured within the period of grace provided in the Arrangement Agreement, DOE may cause the principal amount of the Loan, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Arrangement Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

Section 611.111(b)

Pursuant to Section 611.111(b) of the Applicable Regulations, the Arrangement Agreement must provide that, in the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Arrangement Agreement, note, mortgage, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the loan, and DOE determines, in writing, that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Loan Agreement to cure such default. If the default is not cured during the period of grace, DOE must be permitted to cause the principal amount of the Loan, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Arrangement Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

Section 611.111(c)

Pursuant to Section 611.111(c) of the Applicable Regulations, the Arrangement Agreement must provide that, in the event that the Borrower has defaulted as described in paragraphs (a) or (b) of Section 611.111 of the Applicable Regulations and such default is not cured during the grace period provided in the Agreement, DOE must notify the U.S. Attorney General. DOE, acting through the U.S. Attorney General, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

Section 611.111(d)

Pursuant to Section 611.111(d) of the Applicable Regulations, the Arrangement Agreement must provide that, if DOE is awarded title to collateral assets pursuant to a foreclosure proceeding, DOE may take action to complete, maintain, operate, or lease the Eligible Facilities, or otherwise dispose of any property acquired pursuant to the Loan Agreement or take any other necessary action which DOE deems appropriate.

Section 611.111(e)

Pursuant to Section 611.111(e) of the Applicable Regulations, the Arrangement Agreement must provide that, in addition to foreclosure and sale of Collateral pursuant thereto, the U.S. Attorney General must take appropriate action in accordance with rights contained in the Arrangement Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

Section 611.111(f)

Pursuant to Section 611.111(f) of the Applicable Regulations, the Arrangement Agreement must provide that, in the event that DOE considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the Loan, DOE must take such action as may be appropriate under the circumstances.

Section 611.112

Pursuant to Section 611.112 of the Applicable Regulations, the Arrangement Agreement shall provide DOE, FFB and the Borrower rights to terminate the Loan Documents.

APPENDIX C

to Conditional Commitment Letter

DESCRIPTION OF KEY MILESTONES

	Program Name	Project Number	Program Milestone Timing			
			Design Freeze	DV Complete	PPAP	SOP
1	Chrysler LD HEV	E100003318	08/26/09	11/06/09	05/24/10	10/08/10
2	Chrysler LD Diesel					
3	Ford D471/472 3.5L GTDI	E100002940 E100003023	11/08/08	12/18/08	01/19/09	06/08/09
4	GMX Epsilon II / Delta II	E100002646 E100002854 E100003351	08/02/09	11/15/09	03/11/11	06/13/11
5	Ford F-Series LD Diesel					
6	Ford P415 Gas 2011 MY	E100003326	07/06/09	11/01/09	04/05/10	10/04/10
7	P473 Diesel	E100003004	11/30/08	05/15/09	10/12/09	01/18/10
8	GMT 901 LD Diesel	E100003008				
9	GMT 911/912 Diesel	E100003007	12/14/07	12/29/08	02/01/10	05/03/10

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C-1

[New York #2103603 v14]


ADDENDUM TO CONDITIONAL COMMITMENT LETTER

This Addendum (the "*Addendum*") is entered into as of the 3rd day of November, 2009, among the U.S. Department of Energy ("*DOE*"), Tenneco Automotive Operating Company Inc. (the "*Applicant*") and Tenneco Inc. (the "*Parent*" and, together with DOE and the Applicant, the "*Parties*").

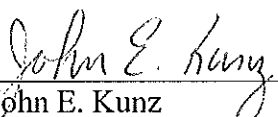
The Parties previously executed the Conditional Commitment Letter, dated as of October 27, 2009 (the "*Conditional Commitment Letter*"), relating to loans to be made to the Applicant under DOE's Advanced Technology Vehicles Manufacturing Incentive Program. However, when the Parties executed the Conditional Commitment Letter they were acting under a mutual mistake of fact that is material to, enters into and forms the basis of and is the essence of the agreement among the Parties. Therefore, the Conditional Commitment Letter, as executed, did not represent the intent of the Parties with respect to the "Maximum Facility Amount" and the "Project Maximum Loan Amount;" however, all other aspects of the agreement were representative of the Parties' understanding. The Parties now desire to reform the terms of the Conditional Commitment Letter to correctly reflect the Parties' intent at the time they entered into the Conditional Commitment Letter and the correct facts, by executing this Addendum.

Accordingly, the Parties hereby agree that each time the Conditional Commitment Letter refers to the amount "\$24,115,000.00 (TWENTY-FOUR MILLION ONE HUNDRED FIFTEEN THOUSAND U.S. DOLLARS)" (either as the "Maximum Facility Amount" or in the definition of "Project Maximum Loan Amount"), there should be substituted the amount "\$24,114,000.00 (TWENTY-FOUR MILLION ONE HUNDRED FOURTEEN THOUSAND U.S. DOLLARS)," which was the amount the Conditional Commitment Letter would have specified had it correctly reflected the intent of the Parties at the time they executed the Conditional Commitment Letter and had the Parties been in possession of the correct facts at that time. The Parties further agree that this reformation of the Conditional Commitment Letter shall be considered for all purposes to be effective as of the date on which the Conditional Commitment Letter was originally executed.


U.S. DEPARTMENT OF ENERGY

By: 
Lachlan Seward, Director Advanced
Technology Vehicles Manufacturing
Loan Program

TENNECO AUTOMOTIVE OPERATING COMPANY INC.

By: 
Name: John E. Kunz
Title: Vice President – Treasurer and Tax

TENNECO INC.

By: 
Name: John E. Kunz
Title: Vice President – Treasurer and Tax